

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MERRICK JOSE MOORE,

Plaintiff, No. CIV S-04-0763 GEB KJM P

vs.

S. SALENGER, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee in effect at the time of filing of his action, \$150.00. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$4.44 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
3 § 1915(b)(2).

4 The complaint states a cognizable claim for relief under 42 U.S.C. § 1983 and 28
5 U.S.C. § 1915A(b) against defendants Sloss, Norton, Evert, Moore, Jackson, Quezada, Look,
6 Bishop, Salenger, Fleischman and Cornage. If the allegations of the complaint are proven,
7 plaintiff has a reasonable opportunity to prevail on the merits of this action against these
8 defendants. The court therefore will order service of process on these defendants. With respect
9 to the remainder of the defendants identified in plaintiff's complaint, plaintiff's complaint fails to
10 state a claim upon which relief can be granted.

11 Plaintiff has requested the appointment of counsel. The United States Supreme
12 Court has ruled that district courts lack authority to require counsel to represent indigent
13 prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989).
14 In certain exceptional circumstances, the court may request the voluntary assistance of counsel
15 under 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
16 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not
17 find the required exceptional circumstances. Plaintiff's request for the appointment of counsel
18 will therefore be denied.

19 In accordance with the above, IT IS HEREBY ORDERED that:

20 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
21 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

22 Plaintiff is assessed an initial partial filing fee of \$4.44. All fees shall be collected and paid in
23 accordance with this court's order to the Director of the California Department of Corrections
24 filed concurrently herewith.

25 3. Service is appropriate for the following defendants: Sloss, Norton, Evert,
26 Moore, Jackson, Quezada, Look, Bishop, Salenger, Fleischman and Cornage.

4. The Clerk of the Court shall send plaintiff 11 USM-285 forms, one summons, an instruction sheet and a copy of the complaint filed April 16, 2004.

5. Within thirty days from the date of this order, plaintiff shall complete the attached Notice of Submission of Documents and submit the following documents to the court:

- a. The completed Notice of Submission of Documents;
- b. One completed summons;
- c. One completed USM-285 form for each defendant listed in number 3 above; and
- d. Twelve copies of the endorsed complaint filed April 16, 2004.

6. Plaintiff need not attempt service on defendants and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants under Federal Rule of Civil Procedure 4 without payment of costs.

7. Plaintiff's request for the appointment of counsel is denied.

DATED: May 18, 2005.


John Muller

UNITED STATES MAGISTRATE JUDGE

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FOR THE EASTERN DISTRICT OF CALIFORNIA

MERRICK JOSE MOORE,

Plaintiff, No. CIV-S-04-0763 GEB KJM P

vs.

S. SALENGER, et al., NOTICE OF SUBMISSION
Defendants. OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Complaint

DATED:

Plaintiff _____